

**FILED**

**MAY 11 2015**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR  
AGENCY ACTION OF EP ENERGY E&P  
COMPANY, L.P. FOR AN ORDER  
POOLING ALL INTERESTS, INCLUDING  
THE COMPULSORY POOLING OF THE  
INTERESTS OF ARGO ENERGY  
PARTNERS, LTD., DUSTY SANDERSON,  
HUNT OIL COMPANY, KKREP, LLC, AND  
J.P. FURLONG CO., IN THE DRILLING  
UNIT ESTABLISHED FOR THE  
PRODUCTION OF OIL, GAS AND  
ASSOCIATED HYDROCARBONS FROM  
THE LOWER GREEN RIVER-WASATCH  
FORMATIONS COMPRISED OF ALL OF  
SECTION 2, TOWNSHIP 3 SOUTH, RANGE  
5 WEST, U.S.M., DUCHESNE COUNTY,  
UTAH.

**MINUTE ENTRY**

Docket No. 2015-013

Cause No. 139-130

This matter came before the Utah Board of Oil, Gas & Mining (the Board) for hearing on April 22, 2015. The Board considered the following in connection with this matter:

- Request for Agency Action (Request), filed by EP Energy E&P Company, L.P. (EPE) on March 10, 2015;
- Response to Request for Agency Action (Response), filed by J.P. Furlong Co. (Furlong) on April 8, 2015;
- Memorandum in Support of Request for Agency Action and in Reply to Furlong's Response to Agency Action, filed by EPE on April 16, 2015;
- Reply to Second Memorandum, filed by Furlong on April 17, 2015; and

- the testimony, exhibits, argument, and other evidence given on the record at the hearing held on April 22, 2015 in Moab, Utah.

The Board, in this Minute Entry, announces its decision and asks EPE to file a proposed final findings of fact, conclusions of law, and order in conformity herewith. The Board grants EPE's Request as it relates to those respondents who did not object or appear. The Board grants EPE and Furlong's request to force pool Furlong's interest. The Board deems Furlong a consenting owner for reasons discussed below. The Board adopts as a part of its Order the Joint Operating Agreement (JOA) proposed by EPE for the reasons discussed below.

EPE asks the Board to deem Furlong a "nonconsenting owner." The statute defines a "nonconsenting owner" as "an owner who after written notice does not consent in advance to the drilling and operation of a well or agree to bear his proportionate share of the costs." Utah Code Ann. § 40-6-2(11). The definition identifies two elements: (1) consenting in advance to the drilling and operation of a well; and (2) agreeing to bear one's proportionate share of costs. These elements are combined with a disjunctive "or," indicating a party can become a nonconsenting owner if it fails to do either one of these things, i.e., consent in advance to the drilling and operation of the well, or agree to bear its proportionate share of costs.<sup>1</sup>

Regarding the second of these two elements, the Board finds under the circumstances of this case that Furlong, in signing the Authority for Expenditure (AFE) and tendering its share of the drilling and completion expenses, agreed to bear its proportionate share of costs. Although

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<sup>1</sup> Conversely, the statute defines a "consenting owner" by reference to the same two elements, combined with a conjunctive "and". A consenting owner is therefore one who both "consents in advance to the drilling and operation of a well and agrees to bear his proportionate share of the costs of the drilling and operation of the well." Utah Code Ann. § 40-6-2(4).

there is an argument that Furlong failed to adequately agree to bear its share of the costs for the drilling *and operation* of the well by refusing to sign the proposed JOA (see below), the Board finds that on balance, under the particular facts of this case, that this element is substantially met.

The other element pertains to whether Furlong consented to the “drilling and operation” of the well. *Id.* The Board agrees with EPE that the statute, both in its references to “operation” of the well, and in empowering the Board to adopt and impose an operating agreement governing such operations, requires that a non-operator do more than simply sign an AFE to avoid being deemed a nonconsenting owner. Good faith efforts to agree to terms meaningfully governing subsequent operation of the well are also necessary. Given the wide range of ongoing operational decisions that must be made after a well is completed, and the joint decision-making and joint accounting activity that must occur in connection with such operations, disagreements will almost certainly arise without a formalized, written agreement.

Reasonable arguments can be made about whether Furlong consented to the drilling *and operation* of the well after it signed the AFE, tendered its share of drilling and completion costs, but failed to sign the JOA proposed by EPE. This question, under these particular facts, is a matter of first impression. The Board, under the circumstances of this case, finds that Furlong did sufficiently consent. Some of the factors the Board considered were:

- Furlong signed the AFE and tendered its money in accordance with that AFE, indicating in some measure an implied consent to operation of the well going forward;
- Based on the testimony given at the hearing, Furlong assumed based upon past experience (albeit from another state where common industry practices may be

different) that an informal agreement concerning ongoing operation of the well was sufficient;

- Furlong has proposed to the Board an operating agreement of its own (an edited version of the EPE agreement) to govern terms of participation going forward;
- Furlong, in its Response, has asked the Board to force pool Furlong's interests and adopt terms governing future operations (including terms drawn from the submitted JOAs).

These factors were considered in this unique matter of first impression, but may not necessarily determine the outcome in future cases. For now, the Board believes this question is best answered on a case-by-case basis, but in the future may find, depending upon the facts of the case and the nature of the good faith negotiations between the parties, that a failure to sign an operating agreement results in nonconsenting owner status.<sup>2</sup>

Regarding the JOA, the Board has reviewed and considered both the EPE JOA (which is based on the 1989 AAPL Form 610 commonly used in the industry)<sup>3</sup> as well as Furlong's

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<sup>2</sup> The Board notes the parties' disagreement regarding whether the "in advance" language of the "nonconsenting owner" definition refers to a non-operator making its election in advance of the drilling of the well (the reading suggested by Furlong) or in advance of being deemed either consenting or nonconsenting via a compulsory pooling action (suggested by EPE). Given the Board's findings regarding the consent given by Furlong as discussed above, Furlong would not be treated as a nonconsenting owner in this matter under either reading. While further analysis of this issue is not necessary to the resolution of the dispute between EPE and Furlong, the Board intends in the near future to address the arguments bearing on this question (including arguments not raised by the parties here) through a position and policy statement, guidance document, or other means.

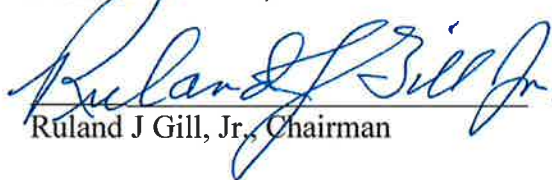
<sup>3</sup> The model-form-based JOA proposed by EPE is also similar in all material respects to other JOAs previously adopted by this Board in prior compulsory pooling matters. Although this form of operating agreement was previously deemed just and reasonable in these prior matters, the Board analyzed the JOA proposed by EPE anew for purposes of making its determination in the present matter.

proposed edits to that same form. The Board asked questions of the witnesses at the hearing about the various JOA provisions at issue between the parties during negotiations. While legitimate disagreement can exist about the provisions at issue, and while the parties' differing proposed terms might be reasonable under certain circumstances, on balance, the Board finds that under the facts of this case, the terms of the EPE proposal are just and reasonable and adopts them for purposes of this matter.

Based on the foregoing, the Board has resolved the parties' disagreements concerning the consenting status of Furlong as well as the terms of an appropriate agreement governing operations going forward. The Board asks EPE to prepare and file a proposed findings of fact, conclusions of law and order in conformity with this ruling.

Dated this 11th day of May, 2015.

**STATE OF UTAH**  
**BOARD OF OIL, GAS AND MINING**

  
Ruland J Gill, Jr., Chairman

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2015, I caused a true and correct copy of the foregoing MINUTE ENTRY for Docket No. 2015-013, Cause No. 139-130, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

Frederick M. MacDonald, Esq.  
MacDonald & Miller  
Mineral Legal Services, PLLC  
7090 S. Union Park Avenue, Suite 400  
Midvale, UT 84047

John DeWitt, Jr. - Staff Landman  
EP Energy E&P Company, L.P.  
P.O. Box 4660  
Houston, TX 77210-4660

Attorney for EP Energy E&P Company, L.P.

Anthony T. Hunter, Esq.  
4715 W. Central  
Wichita, KS 67212

J.P. Furlong Co.  
Attn: Timothy P. Furlong  
P.O. Box 2357  
Bismarck, ND 58502

Attorney for J.P. Furlong Co.

Steven F. Alder, Esq.  
Assistant Attorney General  
1594 West North Temple #300  
Salt Lake City, Utah 84116  
[Via Email]

Michael S. Johnson  
Assistant Attorney General  
1594 West North Temple #300  
Salt Lake City, Utah 84116  
[Via Email]

Attorney for Division of Oil, Gas and Mining

Attorney for Board of Oil, Gas and Mining

### **ROYALTY/OVERRIDNG ROYALTY OWNERS:**

Burthell and Sylvia Mayhew  
5092 West Clay Hollow Avenue  
West Jordan, UT 84081

Linda Hausknecht, Successor Trustee of the  
Sheldon J. Lewis Living Trust  
2300 N. 1167 W.  
Layton, UT 84041  
[Undeliverable]

Larry S. Lewis, Successor Trustee of the  
Sheldon J. Lewis Living Trust  
P.O. Box 218  
Millville, UT 84326

Vicki Lewis, Successor Trustee of the  
Sheldon J. Lewis Living Trust  
2300 N. 1167 W.  
Layton, UT 84041  
[Undeliverable]

Terri Lewis McCurdy  
481 West 2500 South  
Vernal, UT 84078  
[Undeliverable]

Sherry Lewis  
17201 Yellow Rose Way  
Parker, CO 80134  
[Undeliverable]

Ann Hoffman  
517 North 20<sup>th</sup> Avenue  
Yakima, WA 98902

Randy Anderson  
3153 7<sup>th</sup> Place N.E., Apt. 241  
Salem, OR 97303  
[Undeliverable]

Melvin Nord Atwood  
P.O. Box 32  
Mack, CO 81525  
[Address updated 4/30/2015]

Christy Val Atwood  
Apparent Heir of Melvin and Vera Atwood  
3018 South 400 West  
Bountiful, UT 84010-7813  
[Address updated 4/13/2015]

Sherry L. Webb, Successor Trustee of the  
Sheldon J. Lewis Living Trust  
470 N. 100 W., #2006  
Fairview, UT 84629

William D. Lewis  
2292 East Canyon Road  
Spanish Fork, UT 84660  
[Undeliverable]

Jackie Lewis Penner  
29755 Main  
Shedd, OR 97377  
[Undeliverable]

Edward Anderson  
517 North 20<sup>th</sup> Avenue  
Yakima, WA 98902

Leita E. Pine  
525 East 3<sup>rd</sup> North  
Pleasant Grove, UT 84062

Hollis Fred Atwood  
711 Amethyst Drive  
Fruita, CO 81521

Cheryl K. Learfield, Apparent  
Heir of Vera Atwood  
23899 South Rondevic Drive  
Canby, OR 97013

Calvin Gardner,  
Apparent Heir of Vera Atwood  
566 Rio Hondo Rd  
Grand Junction, CO 81507-1061  
[Address updated 4/24/15]

Theresa Scoggins, Apparent  
Heir of Vera Atwood  
1775 Sunset Avenue  
West Linn, OR 97068

Daniel L. Gardner, Apparent  
Heir of Vera Atwood  
19672 Sun Circle  
West Linn, OR 97068

Maxine Rowley, Personal Representative of  
the Estate of Illa H. Sanford  
9801 South Lampton Circle  
South Jordan, UT 84095

Lance James Page  
11408 NE 113 Ter  
Liberty, MO 64068  
[Address added 3/20/2015]

Black Stone Minerals Company, LP  
1001 Fannin, Suite 2020  
Houston, TX 77002-6709

Paul L. McCulliss  
P.O. Box 3248  
Littleton, CO 80161-3248

Harry L. Wirick, Jr., as Trustee of the  
Margaret S. Wirick Trust Under Trust  
Agreement d. 8/26/97  
907 South Detroit, Suite 722  
Tulsa, OK 74120

Erma Merkley, as Trustee  
of the Erma Merkley Property Trust  
P.O. Box 484  
Duchesne, UT 84021

Michael Robert Page  
114 West Creek  
Fredericksburg, TX 78624

Joan Thompson  
Trustee of the E. Arthur Higgins  
Living Family Trust dtd 11/18/99  
3446 West 5700 South  
Roy, UT 84067  
[Undeliverable]

Eric Thomas Page  
P.O. Box 1652  
Topeka, KS 66601

Milam Sons' Minerals, LLC  
John B. Milam, Manager  
P.O. Box 26  
Chelsea, OK 74016-0026

Margaret A. Slemaker, Trustee of the  
Richard W. Slemaker, Jr. and Margaret A.  
Slemaker Revocable Trust d. 10/10/03  
P.O. Box 163  
Broken Arrow, OK 74013-0163

Mary Ellen Slemaker Benien  
1800 W. Granger Street  
Broken Arrow, OK 74102  
[Undeliverable]



George G. Vaught, Jr.  
P.O. Box 13557  
Denver, CO 80201

Leo and LaReta Brady  
HC 63 Box 37  
Duchesne, UT 84021  
**[Undeliverable]**

James Orval Thomas  
5241 South Carpenter Cove  
Salt Lake City, UT 84118

Daniel and Sandra R. Sam  
14730 Candie Lane  
Plymouth IN 46563-8720  
**[Address updated 4/13/2015]**

Frances Sam, Heir to Joseph Sam Estate  
83 CR 317  
Oxford, MS 38655

Jacqueline Rae Dunigan,  
Apparent Heir of Harriett Sam  
8493 Hawthorne Street  
Alta Loma, CA 91701

Alta Ann Johnsen  
122 Ogden Canyon Road  
Ogden, UT 84401  
**[Undeliverable]**

Gary E. Griffiths  
5352 South 1345 West  
Riverdale, UT 84405

Linda Gines  
42376 West Hwy. 25  
Hanna, UT 84031

Daniel S. and Penny B. Sam  
1104 West 1700 South  
Vernal, UT 84078

Covey Minerals, Inc.  
Attn: Gary Nelson  
2733 Parleys Way, Suite 304  
Salt Lake City, UT 84109

Kenneth Cope Thomas  
12337 Margaret Rose Drive  
Riverton, UT 84065

Michael Jessup Thomas  
2187 Wilmington Circle  
Salt Lake City, UT 84109-1228

Theodora Jane Cocagne,  
Apparent Heir of Harriett Sam  
1326 E. Castlecrest Avenue  
Visalia, CA 93292

Nancy Lou Jones,  
Apparent Heir of Harriet Sam  
1423 C Street  
Eureka, CA 95501

Jessup Otto and Sally Johnsen  
14011 South Sands Road  
Valleyford, WA 99036-8521

Wayne S. Griffiths  
403 East Strokes Avenue  
Draper, UT 84020

Gordon T. Griffiths  
970 North Main Street  
Centerville, UT 84014

Lana Kemp Smith  
13 Wanderwood Way  
Sandy, UT 84092

Patricia M. Mothersead  
P.O. Box 155  
Culpepper, VA 22701  
[Undeliverable]

VeTar Energy  
2233 East 3<sup>rd</sup> Avenue  
Port Angeles, WA 98362

Wayne C. and Norma W. Close LLC  
201 West 1400 South  
Orem, UT 84058

Jack D. Close, Sr. and Gay Lee Close  
4153 Ridgecrest Drive  
Las Vegas, NV 89121

Kenneth Leland and Jeanne Thorn Wilkinson,  
Trustees for the Jeanne and Kenneth L.  
Wilkinson Trust  
1040 East 900 South, #34  
St. George, UT 84790

Heirs and Devisees of Constance B. Gleave  
410 North Center Street  
Duchesne, UT 84021  
[Undeliverable]  
Mace T. Gleave  
PO BOX 414  
Ephraim UT 84627-0414  
[Address updated 4/6/2015]

Kamelle Gleave  
385 East 300 North  
Monroe, UT 84754

Myrl Marie Chugg  
2891 North 1050 East  
North Ogden, UT 84414

Charlotte M. McGee  
5052 South Auckland Court  
Aurora, CO 80015

Voda Energy Company, LLC  
897 N. 2500 W.  
Hurricane, UT 84737

J. Smith Investments, LLC  
3745 South Greenbriar Way  
Salt Lake City, UT 84109

Melvin D. Close Jr., as Trustee of the  
Melvin D. Close, Jr. Trust  
2124 Redbird Drive  
Las Vegas, NV 89134

Patricia A. Close  
2124 Redbird Drive  
Las Vegas, NV 89134

Jeff Gleave  
205 South Mountain View Road  
Monroe, UT 84754

Maury V. Gleave  
755 West Hwy 118  
Monroe, UT 84754-4335

Karen T. Gleave Swindle  
205 South Mountain View Road  
Monroe, UT 84754

Dorothy Ivie  
P.O. Box 746  
Duchesne, UT 84021

Weston LaMar Thomas  
P.O. Box 891  
Duchesne, UT 84021

Club Oil and Gas, Ltd., LLC  
(formerly Club Oil & Gas, Ltd.)  
66 Inverness Lane East  
Englewood, CO 80112

Michael N. Fairbanks  
Mark S. Fairbanks  
7490 South 530 West  
Willard, UT 84340

Sharla Rae Lemon  
(No valid address disclosed)

Emily Jacobsen  
Successor Trustee of the Fees Revocable  
Trust dated April 2, 1968, as amended  
4526 Misty Drive  
Colorado Springs, CO 80918

Ute Tribe of Uintah and Ouray Indian  
Reservation  
Energy & Minerals Dept.  
P.O. Box 70  
Ft. Duchesne, UT 84026

Newfield Production Company  
1001 17<sup>th</sup> Street, Suite 2000  
Denver, CO 80202

Karen Babcock  
P.O. Box 787  
Duchesne, UT 84021

Walter Duncan Oil, LLC  
100 Park Avenue, Suite 1200  
Oklahoma City, OK 73102

Raymond T. Duncan Oil Properties, Ltd.  
1777 S. Harrison Street, Penthouse One  
Denver, CO 80210

Suzanne A. Williamson  
(No valid address disclosed)

Sherrie Lee Swinden  
(No valid address disclosed)

Antelope ORRI, LLC  
2441 High Timbers Drive, Suite 120  
The Woodlands, TX 77380

Ute Distribution Corporation  
P.O. Box 696  
Roosevelt, UT 84066

**UNLEASED/NON-CONSENTING/NON-POOLED PARTIES TO BE FORCE  
POOLED:**

Argo Energy Partners, Ltd.  
P.O. Box 1808  
Corsicana, TX 75151

Dusty Sanderson  
7802 Bennington  
Amarillo, TX 79119

J.P. Furlong Co.  
P.O. Box 2357  
Bismarck, ND 58502

Hunt Oil Company  
1900 North Akard Street  
Dallas, TX 75201-2300

KKREP, LLC  
Attn: Kruise B. Kemp, President  
P.O. Box 80942  
Billings, MT 89108

**WORKING INTEREST OWNERS:**

Bill Barrett Corporation  
Attn: David Watts  
1099 18<sup>th</sup> Street, Suite 2300  
Denver, CO 80202

Broughton Petroleum Inc.  
P.O. Box 1389  
Sealy, TX 77474

Crescent Point Energy U.S. Corp.  
Attn: Ryan Waller  
555 17<sup>th</sup> Street, Suite 1800  
Denver, CO 80202

Croff Oil Company, Inc.  
16 Waterway Court  
The Woodlands, TX 77380-2641

Linn Operating, Inc.  
1999 Broadway Street, Suite 3700  
Denver, CO 80202

QEP Energy Company  
1050 17<sup>th</sup> Street, Suite 500  
Denver, CO 80265

Slover Minerals, L.P.  
3614 Royal Road  
Amarillo, TX 79109

T.C. Craighead & Company  
P.O. Box 576  
Ardmore, OK 73402-0576

**SUPERVISORY GOVERNMENTAL AGENCIES:**

BIA Uintah and Ouray Agency  
P.O. Box 130  
Fort Duchesne, UT 84026

United States Bureau of Land Management  
Vernal Field Office  
Attn: Jerry Kenczka  
170 South 500 East  
Vernal, UT 84078

A handwritten signature in blue ink, reading "Julie Ann Carter", is written over a horizontal line.